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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/975,940	11/21/97	CUMMINS	551/816

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PMC1/0419

EXAMINER  
KENT, C

ART UNIT	PAPER NUMBER
3635	112

DATE MAILED: 04/19/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.  
**08/975,940**

Applicant(s)  
**Alfred D. Commons et al.**

Examiner  
**Christopher T. Kent**

Group Art Unit  
**3635**



☒ Responsive to communication(s) filed on Feb 26, 1999

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-35 is/are pending in the application.

Of the above, claim(s) 11-14 is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1, 3-8, 15-18, 20, 24, 25, 27-30, and 32 is/are rejected.

☒ Claim(s) 2, 9, 10, 19, 21-23, 26, 31, and 33-35 is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 8 and 9

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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## **DETAILED ACTION**

### ***Response to Election***

Applicant's election without traverse of the species of invention of Figures 7A, claims 1-10 and 15-35, filed 02/26/99, is acknowledged. Claims 11-14 have been withdrawn from further consideration as directed to a non-elected invention.

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, a wall including a plurality of adjoining structural panels as in claims 33 and 34, must be shown or the features canceled from the claims. No new matter should be entered.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

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(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 1, 3-6, 15, 16, 24, 25, 27, 28, and 32 are rejected under 35 U.S.C. 102(e) as being anticipated by Mueller, U.S. Patent Number 5,706,626. Mueller teaches a wall designed to resist lateral forces imposed on a building, said building having an underlying structural component supporting said wall, said wall comprising: top and bottom plates connected by vertically disposed studs; and a shear resisting assembly (100) connected to the top and bottom plates, the assembly comprising: a planar shear resisting element (110), top and bottom struts, first and second chords, means for connecting the assembly members together, and means for connecting the assembly to the top plate and underlying structural component.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 7, 8, 17, 18, 20, 29, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mueller.

Regarding claims 7, 8, 17, 18, and 20, Mueller fails to specify oversized or slotted openings for the connection of the assembly to the underlying structural component. It is common engineering practice to provide oversized or slotted openings in structural connections to allow for adjustability of assembly. Therefore, it would have been obvious at the time the invention was made to a person having ordinary skill in art to provide these features to the assembly of Mueller.

Regarding claims 29 and 30, Mueller fails to specify intermediate studs and means for connecting the intermediate studs to the top and bottom struts of the assembly. The provision of more and intermediate studs for providing additional structural support would have been obvious at the time the invention was made to a person having ordinary skill in the art.

***Allowable Subject Matter***

Claims 2, 9, 10, 19, 21-23, 26, 31, and 33-35 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

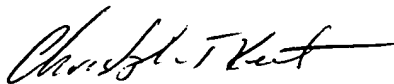
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*Citation of Relevant Prior Art*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Schumacher, Ricken, Charles, and Johnson all teach structures related to Applicant's disclosed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher Kent whose telephone number is (703) 308-2497.

**CHRISTOPHER T. KENT**  
**PRIMARY EXAMINER**



Christopher T. Kent  
Primary Examiner  
Technology Center 3600  
April 15, 1999